IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4796 OF 1992

Vithu Rama Kaingade, since deceased by his heirs and legal represnetatives Nivrutti Vithu Kaingade & Ors. ..Petitioners

versus

Sharad Dhondo Kulkarni ..Respondent

Mr. A. Y. Sakhare with Mr. S. Karpe for the Petitioners.

Mr. R. S. Apte for the Respondent.

CORAM : D. G. DESHPANDE, J.

DATE : 20TH SEPTEMBER, 2006

ORAL ORDER :

1. Heard Advocate for the Petitioners and the Respondent.

2. The petitioners are tenants. Proceedings under Section 32F of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Tenancy Act") in respect of certain land situated at Village Devale, Taluka Panhala, were initiated at the instance of the tenant -

petitioners against the landlord. The Additional Tahsildar & A.L.T. Panhala passed an order on 25.6.1987 and rejected the prayer holding that the tenants have failed to exercise their right to purchase the suit land in the prescribed time after the death of widow landlady, and, therefore the purchase was declared ineffective and the land was ordered to be disposed of under Section 32G as per the procedure after the appeal period is over.

3. Petitioners - tenants thereafter filed Appeal before the S.D.O. Kolhapur. The S.D.O. vide order dated 30.10.1991 partly allowed the Appeal and remanded the matter to the trial court for deciding it on merits afresh. The landlord then filed Revision Application No. MRT-KP-81/1992 before the Maharashtra Revenue Tribunal, Kolhapur. The Revision was allowed and the order of the SDO was set aside and that of the Additional Tahsildar and A.L.T. was confirmed. Hence, this petition at the instance of the tenants- petitioners.

4. Crucial question involved in the matter is and appears to be whether the tenant has complied within the stipulated time. Advocate for the

petitioners drew my attention to provisions of Section 32F (a) and also 32F (1A) and provisos and contended that when the proceedings were initially initiated but were closed because of the landlady was a widow, that is, the person under disability, then it was not necessary for the tenants to give any intimation as required by Section 32F (1A) of the Tenancy Act. Since Section 32F (a) and (1A) and provisos, are vital for deciding this petition, they are reproduced as under:

> **"32F. Right of tenant to purchase where landlord is minor, etc.** (1) *Notwithstanding anything contained in the preceding sections,--*
>
> *(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31 [and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31.*
>
> *[Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st*

day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion].

(1A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section.

[Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section(1), he may give such intimation within a period of two years from the commencement of that Act.]

From the wording of Section 32F (a) and with reference to other provisions, as stated above, it will be clear that after the minors attains majority, then they have to exercise their right within two years. Whereas the tenant gets one year more by the wording of the section 32F(a). If the landlord wants to retain the land or they have sent an intimation to the tenant. Obviously this intimation has to be in writing for terminating the

tenancy.

5. Section 32F (1A) casts an obligation upon the tenant that where he decides to exercise his option under Section 32F (a) that he will give an intimation in that behalf to the landlord and the Tribunal both in the prescribed manner within the period specified in that sub section i.e. sub section (a), then proviso to (1A) also clearly speaks about this opportunity or right given to the tenant. If the tenant has not given any intimation but he is in possession of the land then also he has to give intimation within two years from the commencement of that Act i.e. Amendment Act 1969.

6. From both these provisions 32F (a) and (1A) and the proviso, it is clear that it is obligation upon the tenant to give intimation to the landlord. Admittedly, in this case no such intimation is given by the tenant. From the order of the Tahsildar it will be clear that when the enquiry under Section 32G was started initially it was postponed because landlord was minor. Again this enquiry was started but postponed and the third enquiry was started in 1980 on the application of the landlord. In the 3rd

enquiry the tenant continuously remained absent and failed to exercise right of purchase within a period of two years and consequently purchase of the said land was declared ineffective under Order dated 6.5.1981.

7. Thereafter the tenant has given a notice to the landlord, copy of which was received by that office on 22.7.1981. Appeal was preferred against that order dated 6.5.1981 by the tenants. It was rejected and direction was given to dispose of the suit land under Section 32P(2) of the Tenancy Act vide order dated 16.5.1983. Both these orders have been subsequently set aside on the ground that public notice under Section 32G (3) was not published.

8. Thereafter, the Tahsildar's order reveals that public notice dated 10.2.1986 was published. A report of the Talathi is along with the extract of Devale Village register was produced. Tenants were served but they remained absent. Thereafter procedure prescribed under Section 230 of the Maharashtra Land Revenue Code was followed in respect of some of the tenants who were legal heirs

of the original tenant. Report of the Talathi at record pages 51 to 53 were obtained. Landlord's statement was recorded and thereafter due to the absence of the tenants obviously repeated notices and public notice, came to the conclusion that tenants were not at all interested in purchasing the suit land. He also came to the conclusion that no notice was given to the successor within the period of two years as required under Section 32F (1A). From all these provisions it is clear that the tenant has not complied with the requirements of Section 32F (a) or (1A) and rightly therefore the MRT set aside the order of the SDO and upheld the Order of the Additional Tahsildar & A.L.T.. There is no perversity in the Order of MRT. No interference is called for. Petition is dismissed. Rule is discharged. No order as to costs.

(D.G. DESHPANDE, J.)